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BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **Yanbing Zeng, M.D.** **3025 W. Christoffersen Parkway, B305** **Turlock, CA 95382** **Physician's and Surgeons Certificate No. A 88250,** Respondent.	Case No. 800-2017-035748 **A C C U S A T I O N**

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about July 21, 2004, the Medical Board issued Physician's and Surgeons Certificate Number A 88250 to Yanbing Zeng, M.D. (Respondent). The Physician's and Surgeons Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2020, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 725 of the Code states:

"(a) Repeated acts of clearly excessive prescribing, furnishing, dispensing, or administering of drugs or treatment, repeated acts of clearly excessive use of diagnostic procedures, or repeated acts of clearly excessive use of diagnostic or treatment facilities as determined by the standard of the community of licensees is unprofessional conduct for a physician and surgeon, dentist, podiatrist, psychologist, physical therapist, chiropractor, optometrist, speech language pathologist, or audiologist.

"(b) Any person who engages in repeated acts of clearly excessive prescribing or administering of drugs or treatment is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars ($100) nor more than six hundred dollars ($600), or by imprisonment for a term of not less than 60 days nor more than 180 days, or by both that fine and imprisonment.

"(c) A practitioner who has a medical basis for prescribing, furnishing, dispensing, or administering dangerous drugs or prescription controlled substances shall not be subject to disciplinary action or prosecution under this section.

"(d) No physician and surgeon shall be subject to disciplinary action pursuant to this section for treating intractable pain in compliance with Section 2241.5."

5. Section 2228 of the Code states:

"The authority of the board or the California Board of Podiatric Medicine to discipline a licensee by placing him or her on probation includes, but is not limited to, the following:

"(a) Requiring the licensee to obtain additional professional training and to pass an examination upon the completion of the training. The examination may be written or oral, or both, and may be a practical or clinical examination, or both, at the option of the board or the administrative law judge.

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"(b) Requiring the licensee to submit to a complete diagnostic examination by one or more physicians and surgeons appointed by the board. If an examination is ordered, the board shall receive and consider any other report of a complete diagnostic examination given by one or more physicians and surgeons of the licensee's choice.

"(c) Restricting or limiting the extent, scope, or type of practice of the licensee, including requiring notice to applicable patients that the licensee is unable to perform the indicated treatment, where appropriate.

"(d) Providing the option of alternative community service in cases other than violations relating to quality of care."

6. Section 2234 of the Code, states:

"The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"...

"(b) Gross negligence.

"(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

"(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

"(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

"..."

7. Section 2241 of the Code states:

"(a) A physician and surgeon may prescribe, dispense, or administer prescription drugs,

including prescription controlled substances, to an addict under his or her treatment for a purpose other than maintenance on, or detoxification from, prescription drugs or controlled substances.

"(b) A physician and surgeon may prescribe, dispense, or administer prescription drugs or prescription controlled substances to an addict for purposes of maintenance on, or detoxification from, prescription drugs or controlled substances only as set forth in subdivision (c) or in Sections 11215, 11217, 11217.5, 11218, 11219, and 11220 of the Health and Safety Code. Nothing in this subdivision shall authorize a physician and surgeon to prescribe, dispense, or administer dangerous drugs or controlled substances to a person he or she knows or reasonably believes is using or will use the drugs or substances for a nonmedical purpose.

"(c) Notwithstanding subdivision (a), prescription drugs or controlled substances may also be administered or applied by a physician and surgeon, or by a registered nurse acting under his or her instruction and supervision, under the following circumstances:

"(1) Emergency treatment of a patient whose addiction is complicated by the presence of incurable disease, acute accident, illness, or injury, or the infirmities attendant upon age.

"(2) Treatment of addicts in state-licensed institutions where the patient is kept under restraint and control, or in city or county jails or state prisons.

"(3) Treatment of addicts as provided for by Section 11217.5 of the Health and Safety Code.

"(d)(1) For purposes of this section and Section 2241.5, "addict" means a person whose actions are characterized by craving in combination with one or more of the following:

"(A) Impaired control over drug use.

"(B) Compulsive use.

"(C) Continued use despite harm.

"(2) Notwithstanding paragraph (1), a person whose drug-seeking behavior is primarily due to the inadequate control of pain is not an addict within the meaning of this section or Section 2241.5."

8. Section 2242 of the Code states:

"(a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022

without an appropriate prior examination and a medical indication, constitutes unprofessional conduct.

"..."

9. Section 2266 of the Code states: "The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct."

FACTUAL ASSERTIONS

Patient No. 1

Background Information

10. Patient No. 1 was a female with a past medical history of hypertension, intravenous drug use, hepatitis C, motor vehicle accident, anxiety, insomnia, cellulitis of right lower extremity, methicillin-resistant Staphylococcus aureus (MRSA) infection, stroke, cellulitis of left leg, right shoulder pain, disturbance of skin sensation, low back pain, and feet pain.

11. Patient No. 1 had surgery on her neck in approximately 2008. After the surgery, Patient No. 1 began to take prescribed controlled substances, including opioids. Patient No. 1 soon began to take prescribed controlled substances excessively. Patient No. 1 sought medical treatment and prescriptions from several doctors simultaneously.

12. Patient No. 1 exhibited signs and symptoms of drug seeking behavior and prescription drug abuse, dependency, and addiction.

13. Patient No. 1 reportedly became "addicted" to the prescribed controlled substances, and was described as a "functioning addict."

14. Respondent started treating Patient No. 1 on April 15, 2009.

15. Between 2010 and July 2013, Patient No. 1 was taken to local hospitals several times due to altered mental state, and/or loss of consciousness, and/or symptoms consistent with drug abuse.

a. Multiple providers during the course of her many hospital stays opined that Patient No. 1 abused and/or was addicted to prescriptions drugs, including controlled substances.

b. During her several hospital stays, Patient No. 1 was placed on a California

Welfare and Institutions Code section 5150[1] hold on multiple occasions.

c. Between July 22, 2013, through July 24, 2013, Patient No. 1 was admitted to the hospital for polysubstance overdose and abuse, among other reasons. Patient No. 1 was reported to be suicidal.

d. Patient No. 1 returned to the emergency room on July 25, 2013, and was admitted until July 27, 2013. Providers advised Patient No. 1 to stop using Soma[2] and to reduce and eliminate her use of Xanax.[3]

Respondent's Treatment of Patient No. 1

16. Between April 15, 2009, through July 18, 2013, Respondent had 44 in-office visits with Patient No. 1. During the 44 office visits, Respondent:

a. Failed to document history of present illness in 43 of 44 face-to-face visit notes.

b. Failed to document a proper physical exam on multiple visits where opioids were prescribed for pain.

c. Documented normal exams on 7 visits, yet prescribed opioids to Patient No. 1 for pain.

d. Failed to sign the patient notes until January 28, 2018, when the documents were requested by the Board.

e. Failed to document an assessment or plan regarding Patient No. 1's low back pain and anxiety. However, Respondent dispensed opioids and benzodiazepines.

f. Failed to document a history of present illness as to anxiety, depression, or suicidal ideations. Never employed any technique to monitor anxiety level. However, Respondent continually prescribed benzodiazepines for anxiety.

g. On April 15, 2009, Respondent failed to document Patient No. 1's use of medications.

h. On August 31, 2011, Respondent failed to document an appropriate pain work-

[1] This code section permits the 72-hour involuntary commitment of a person who is 1) a danger to others; 2) danger to self; and/or 3) gravely disabled.

[2] A muscle relaxant.

[3] A benzodiazepine used to treat anxiety and panic disorder.

up and documented a normal physical exam. Despite the lack of indication, Respondent prescribed opiates. Finally, Respondent did not inquire regarding suicidal ideations.

i. On May 20, 2012, Respondent failed to document a history of present illness. Respondent documented Patient No. 1's musculoskeletal and neurological exams as normal and did not document pertinent positive or negative findings. Despite the lack of indication, Respondent prescribed opioids and benzodiazepines.

j. On February 22, 2013, Respondent treated Patient No. 1 for low back pain. Respondent failed to document a proper back exam. Respondent failed to document whether she requested additional testing or imaging. Despite the lack of indication, Respondent prescribed opioids and benzodiazepines.

k. On June 3, 2013, Respondent documented that Patient No. 1 had thoughts of "jumping off of a bridge, but no longer has that idea." Respondent did not explore Patient No. 1's suicidal ideations, level of depression, or level of anxiety.

l. On June 25, 2013, Respondent refilled prescriptions for Xanax and Zoloft.[4] Respondent failed to document the efficacy of the medication and whether Patient No. 1 experienced side effects. Respondent failed to document whether she referred Patient No. 1 to a psychiatrist, psychologist or to a drug rehabilitation program.

m. On July 18, 2013, Respondent documented that Patient No. 1 was hospitalized as a result of "inappropriate behavior." However, there is no documentation that Respondent determined whether Patient No. 1's "inappropriate behavior" was related to her known abuse of prescribed controlled substances.

17. During a subsequent interview with the Board, Respondent admitted that she was concerned about Patient No. 1's abuse of prescribed controlled substances. However, Respondent continued to prescribe at each visit because Patient No. 1 would cry or threaten to sue for abandonment. Respondent documented Patient No. 1's threats on multiple occasions.

18. Respondent first prescribed temazepam, a benzodiazepine, on April 15, 2009.

[4] A selective serotonin reuptake inhibitor used to treat a variety of mental health conditions.

Between August 2009, through July 2013, Respondent prescribed a variety of benzodiazepines, including temazepam, estazolam, alprazolam, and diazepam approximately every month.

19. Respondent first prescribed hydrocodone, an opioid, to Patient No. 1 in August 2011. Between March 2012, through July 2013, Respondent prescribed opioids approximately every month.

20. Between January 2013, and July 2013, Respondent prescribed carisoprodol (Soma), a muscle relaxant, to Patient No. 1 approximately every month.

21. On August 20, 2013, Patient No. 1 died at the age of 57 as a result of "acute alprazolam, morphine, fentanyl and carisoprodol intoxication."

Patient No. 2

Background

22. Patient No. 2 was a female with a medical history of depression, anxiety, chronic back pain, headaches, aneurysm, gastroesophageal reflux disease, cholecystitis,[5] cholelithiasis.[6]

23. Patient No. 2 was previously admitted into a psychiatric facility in approximately 2011. Further, Patient No. 2 was placed on California Welfare and Institutions Code section 5150 holds on multiple occasions.

24. Patient No. 2 attempted suicide in 2011 and 2012.

25. Patient No. 2 presented to the emergency department at a local hospital on the following occasions:

a. On August 2, 2012, Patient No. 2 was seen for abdominal pain and diagnosed with cholecystitis. Patient No. 2 received dilaudid[7] and Zofran.[8]

b. On August 3, 2012, Patient No. 2 returned to the emergency department. She was admitted from August 3, 2012, through August 6, 2012, for anxiety, depression, and suicidal ideation.

c. On October 13, 2012, Patient No. 2 was again transported to the emergency

[5] Inflammation of the gallbladder.
[6] Gallstones.
[7] An opioid analgesic used to relieve moderate to severe pain.
[8] A serotonin 5-HT3 receptor antagonist, used to block nausea and vomiting.

department. Patient No. 2 was admitted from October 13, 2012, through October 16, 2012 for acute cholecystitis, transaminitis,[9] depression, gastroesophageal reflux disease and hypokalemia.[10]

d. On November 9, 2012 Patient No. 2 again presented to the emergency department for right upper quadrant pain. Patient No. 2 was given IV fluids, dilaudid and Zofran in the emergency room. Patient No. 2 was discharged from the hospital with pain medication.

26. Patient No. 2 had laparoscopic cholecystectomy[11] surgery on November 20, 2012.

Respondent's Treatment of Patient No. 2

27. Respondent began treating Patient No. 2 on December 6, 2012. Patient No. 2's chief complaint was "chest palpitation." Prior to December 6, 2012, Respondent was provided copies of Patient No. 2's hospital records from the dates of service as described in Paragraph 25.

28. Between December 6, 2012 and April 2013, Respondent prescribed alprazolam to Patient No. 2 approximately every month. During that period, Respondent prescribed approximately 660 alprazolam pills. During this period, Respondent was the only provider that prescribed alprazolam to Patient No. 2.

29. Respondent produced one patient encounter note dated December 6, 2012.

a. In the single patient encounter note, Respondent failed to document a pertinent assessment related to Patient No. 2's chief complaint, chest palpitations.

b. Respondent also failed to document a history or assessment of Patient No. 2's anxiety and depression. Respondent documented Patient No. 2's neurological/psychiatric condition as "normal." Respondent prescribed alprazolam for anxiety.

c. Respondent failed to document the reason for prescribing alprazolam.

30. Respondent failed to document the reasons she continued to prescribe alprazolam to the patient without a follow-up visit.

31. On July 26, 2013, Patient No. 2 committed suicide by acute butalbital,[12] oxycodone,

[9] An underlying medical condition that causes high levels of certain liver enzymes that move into the blood stream. The condition may cause jaundice.

[10] Low potassium level.

[11] A surgical removal of the gallbladder.

[12] A barbiturate sedative.

alprazolam, acetaminophen, and ethanol intoxication. Patient No. 2 was 50 years-old.

Standard of Care

32. Standard of care for documentation of a pertinent S.O.A.P.[13] note. A physician must obtain a history or review of symptoms pertinent for the patient's presenting complaints or their current or past medical conditions. The physician must also must document the physical examination findings, assessments or diagnoses, and plans as they relate to the patient's presentation.

a. As to Patient No.1, Respondent departed from the standard of care with respect to proper S.O.A.P. recordkeeping as follows:

i. Respondent failed to record a history of present illness. Respondent prescribed controlled substances without documenting the patient's tolerance, side effects, and not asking appropriate pain workup questions.

ii. Respondent failed to record a focused physical exam relative to the patient's pain. Respondent prescribed controlled substances for pain without documentation of objective findings.

iii. Respondent failed to sign notes from 2013 until 2018.

iv. Respondent failed to record a history or assessment/diagnosis relative to Patient No. 1's low back pain and anxiety. Respondent failed to justify use of opiates and benzodiazepines.

v. Respondent failed to record a history regarding depression, anxiety, and suicidal ideations. Respondent failed to use any mental status examinations to evaluate Patient No. 1's anxiety.

b. As to Patient No. 2, Respondent departed from the standard of care with respect to proper S.O.A.P. recordkeeping as follows:

i. Respondent failed to document an adequate assessment and/or diagnosis as to Patient No. 2's complaint of chest palpitations.

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[13] Subjective complaints or history, Objective findings including physical exam findings, Assessment or diagnosis; Providers plans to address the diagnosis.

ii. Respondent failed to document a history or assessment and/or diagnosis as to Patient No. 2's anxiety and depression.

33. Standard of care for prescribing medications outside the Federal Drug Administration recommended prescribing information. The physician must document the use of all medication. Any use of medications outside of the recommended prescribing information should be documented. A patient should be informed of off-label use of medication.

a. As to Patient No. 1, Respondent departed from standard of care as follows:

i. Respondent failed to document the extended use of Soma beyond the recommended two to three-week period. Respondent prescribed Soma monthly between January 2013 and July 2013. Soma is recommended for short period use (two to three weeks).

34. Standard of care regarding prescribing controlled substances with appropriate medical indication. A physician must document appropriate medical indication and plan for use of controlled substances.

a. As to Patient No. 1, Respondent departed from the standard of care as follows:

i. Respondent failed to document in the history and assessment the reason for prescribing controlled substances.

ii. Respondent failed to document a history or diagnosis to support prescribing alprazolam. Respondent failed to document other medications and/or treatments previously used, or tools to assist in the evaluation of anxiety. Respondent documented no referrals to psychiatry.

iii. Respondent failed to document history or diagnosis sufficient to appropriately prescribe Norco. Respondent only documents one referral to a pain management specialist on June 3, 2013; after a four-year course of prescribing Norco.

b. As to Patient No. 2, Respondent departed from the standard of care as follows:

i. Respondent failed to document in the history and assessments the reason for prescribing a controlled substance.

35. Standard of care regarding prescribing of controlled substances in medically necessary amounts. A physician must document an appropriate examination and medical

indication. The patient must be monitored for continued need of medications, patient functioning, side effects, other treatment modalities, and plan for continued use.

a. As to Patient No. 1, Respondent departed from the standard of care as follows:

i. Respondent failed to document the reasons for prescribing controlled substances. Respondent continued to provide refills without a plan to taper patient off medications, or try additional treatment modalities.

ii. Respondent's continuation of Patient No. 1 on hydrocodone and alprazolam departs from the standard of care as Respondent failed to document a history and physical sufficient to justify use of opioids and benzodiazepines. Respondent documented no attempt to wean patient from the use of opioids. Respondent documented no monitoring of liver functioning. Respondent did not document any imaging obtained or attempt to order imaging to justify continued use. During a subsequent Board interview, Respondent stated she was concerned that Patient No. 1 was abusing the controlled substances prescribed to her, was exhibiting drug seeking behavior, and was dependent upon the prescribed controlled substance. Despite the concern, Respondent continued to prescribe controlled substances for years.

iii. Respondent diagnosed Patient No. 1's back pain solely based upon the patient's reported history.

iv. Respondent used a combination of medications that are known to cause central nervous system depression and death.

v. Respondent failed to obtain a signed pain contract, urine toxicology, or a thorough history of patient's substance abuse problem, despite Respondent's long-term prescribing of opioids and benzodiazepines.

vi. During a subsequent Board interview, Respondent claimed to attempt to wean Patient No. 1 off of alprazolam. However, Respondent's prescriptions document an increase in the dose and use frequency of alprazolam.

vii. During a subsequent Board interview, Respondent claimed to attempt to wean Patient No. 1 off of hydrocodone. However, Respondent's prescriptions document an increase in the dose and use frequency of hydrocodone.

b. As to Patient No. 2, Respondent departed from the standard of care as follows:

i. Respondent failed to document in the history and assessment the reason for prescribing a controlled substance and continued to provide refills to Patient No. 2 without a follow-up examination.

FIRST CAUSE FOR DISCIPLINE

(Prescribing Without Medical Indication - Patients Nos. 1 and 2)

36. Respondent is subject to disciplinary action under California Business and Professions Code section 2242, subdivision (a) in that Respondent prescribed controlled substances to Patients Nos. 1 and 2 without conducting an appropriate physical examination prior to prescribing, and without appropriate indication of the need to prescribe a controlled substance. The circumstances are as follows:

37. The facts and circumstances regarding this Cause for Discipline are alleged in paragraphs 10 through 31, and 34, above, and are hereby incorporated by reference and realleged as if fully set forth herein.

SECOND CAUSE FOR DISCIPLINE

(Excessive Prescribing - Patients Nos. 1 and 2)

38. Respondent is subject to disciplinary action under California Business and Professions Code section 725, in that Respondent excessively prescribed controlled substances to Patients Nos. 1 and 2. The circumstances are as follows:

39. The facts and circumstances regarding this Cause for Discipline are alleged in paragraphs 10 through 31, and 35, above, and are hereby incorporated by reference and realleged as if fully set forth herein.

THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records - Patients Nos. 1 and 2)

40. Respondent is subject to disciplinary action under section California Business and Professions Code section 2266, in that Respondent failed to maintain adequate and accurate records regarding her care and treatment of Patients Nos. 1 and 2. The circumstances are as follows:

41. The facts and circumstances regarding this Cause for Discipline are alleged in paragraphs 10 through 31, and 32, above, and are hereby incorporated by reference and realleged as if fully set forth herein.

FOURTH CAUSE FOR DISCIPLINE

(Furnishing Drugs to an Addict - Patient No. 1)

42. Respondent is subject to disciplinary action under California Business and Professions Code section 2241, in that Respondent repeatedly prescribed controlled substances to Patient No. 1 despite having concerns that the patient was 1) engaging in drug-seeking behavior, 2) abusing the prescribed controlled substances; and 3) was dependent and/or addicted to the prescribed substances. The circumstances are as follows:

43. The facts and circumstances regarding this Cause for Discipline are alleged in paragraphs 10 through 21, and 32 through 35, above, and are hereby incorporated by reference and realleged as if fully set forth herein.

FIFTH CAUSE FOR DISCIPLINE

(Gross Negligence - Patients Nos. 1 and 2)

44. Respondent is subject to disciplinary action under California Business and Professions Code section 2234, subdivision (b) in that Respondent engaged in acts that constitute gross negligence during the care and treatment of Patients Nos. 1 and 2. The circumstances are as follows:

45. The facts and circumstances regarding this Cause for Discipline are alleged in paragraphs 10 through 35, above, and are hereby incorporated by reference and realleged as if fully set forth herein.

SIXTH CAUSE FOR DISCIPLINE

(Repeated Acts of Negligence - Patients Nos. 1 and 2)

46. Respondent is subject to disciplinary action under California Business and Professions Code section 2234, subdivision (c) in that Respondent committed repeated negligence acts in the care and treatment of Patients Nos. 1 and 2. The circumstances are as follows:

47. The facts and circumstances regarding this Cause for Discipline are alleged in

paragraphs 10 through 35, above, and are hereby incorporated by reference and realleged as if fully set forth herein.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking or suspending Physician's and Surgeons Certificate Number A 88250, issued to Yanbing Zeng, M.D.;

2. Revoking, suspending or denying approval of Yanbing Zeng, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Yanbing Zeng, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

4. Taking such other and further action as deemed necessary and proper.

DATED:

January 11, 2019

KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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